

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of:

Petitions for Declaratory Ruling Regarding  
Public, Educational, and Governmental  
Programming

MB Docket No. 09-13  
CSR-8126, CSR-8127, CSR-8128

**COMMENTS OF THE CITY OF WHITE PLAINS  
AND THE TOWN/VILLAGE OF HARRISON, NEW YORK**

The City of White Plains and the Town/Village of Harrison, New York (the “New York Communities”), respectfully submit these comments in response to the Public Notice, DA 09-203 (rel. Feb. 6, 2009), seeking comment on Petitions for Declaratory Ruling filed by various parties to request Commission guidance regarding the carriage of public, educational and governmental (“PEG”) access channels. The New York Communities support the petition<sup>1</sup> filed by the City of Dearborn, Michigan; the Charter Township of Meridian, Michigan; the Charter Township of Bloomfield, Michigan; and the City of Warren, Michigan (the “Michigan Communities”). The experience of the New York Communities demonstrates that the digitalization of PEG channels while broadcast channels continue to be provided in analog format – at least as it has been implemented in Westchester County – fundamentally changes the availability and accessibility of the channels, so that they are no longer part of the basic tier of service.

The New York Communities are served by Cablevision, and in September 2008 Cablevision converted the signals of the PEG channels carried on its systems in Westchester

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<sup>1</sup> Petition for Declaratory Ruling Regarding Primary Jurisdiction Referral in *City of Dearborn et al. v. Comcast of Michigan III, Inc. et al.* of the City of Dearborn, Michigan; the Charter Township of Meridian, Michigan; the Charter Township of Bloomfield, Michigan; and the City of Warren, Michigan (filed December 9, 2008) (the “Michigan Petition”).

County from analog to digital format, just as Comcast proposes to do in Michigan.

Cablevision's actions have harmed subscribers, and the New York Communities themselves.

The New York Communities support the legal arguments made in the Michigan Petition, and the additional arguments made by Montgomery County, Maryland, in its comments.

These Comments are supported by the attached Declarations of Joan Walsh, the Supervisor/Mayor of the Town/Village of Harrison; James Kenny, the Executive Director of the White Plains Cable Access Commission; and Everett C. Parker, a member of the White Plains Cable Access Commission. These Declarations describe in detail the problems created by Cablevision's actions and the ways in which they harm the public interest and undermine the purposes of the Cable Act. Below we summarize the key issues raised by Cablevision's actions in both communities.

**I. CABLEVISION'S ACTIONS HAVE CONFUSED RESIDENTS, IMPOSED NEW FINANCIAL BURDENS ON SUBSCRIBERS AND LOCAL GOVERNMENTS, AND UNDERMINED THE ABILITY OF LOCAL GOVERNMENTS TO INFORM THEIR CITIZENS BY MEANS OF THE CABLE SYSTEM.**

Cablevision has harmed consumers and public bodies – the local governments and the schools – in White Plains and Harrison (as well as in other New York communities). And because Cablevision has done essentially what Comcast seeks to do in Michigan, it seems fair to conclude that subscribers and local governments all across the country would be harmed in similar ways if the FCC rules in a way that may allow Comcast to proceed. While some of these harms are lasting, and others arose from the fashion in which Cablevision implemented the transition, all arise from an erroneous legal conclusion: that the company is free to manipulate the PEG channels in virtually any way it sees fit in the absence of a specific franchise prohibition. In fact, because the channels by their nature are not under the editorial control of the operator, the operator's obligation is to treat them neutrally. Furthermore, even the

implementational issues have long-term implications, because they increase the likelihood that some subscribers will not have access to PEG programming. Thus, they should not be dismissed as purely transitory.

**A. White Plains Residents and the City Have Been Harmed in Various Ways.**

As of the date of these Comments, basic-only subscribers in White Plains who were in that status as of September 15, 2008, and who requested a free converter box by December 31, 2008, can receive the PEG channels at their original channel locations on a single television set. Basic subscribers who missed the deadline cannot receive the PEG channels unless they pay for a new television set or a CABLECard. Even then, subscribers who buy new sets will not find the PEG channels at the same channel location as other subscribers. Basic subscribers who received a free converter but later move or make any changes to their service will lose the free converter. And no subscriber, to any level of service, can receive the PEG channels on any additional outlet unless the outlet is connected to a QAM television set or the subscriber is paying for a digital converter box at that outlet. The only other channels that are being treated in the same fashion are the Eternal Word Television Network (EWTN), Cablevision's local origination channel, and digital duplication of the Home Shopping Network, which is also carried on analog channel 19. Kenny Dec. at ¶¶ 8-10, 16.

1. Cablevision Has Effectively Created Multiple Basic Tiers.

With the exception of grandfathered subscribers who acted in time, subscribers who receive only the basic tier of service and do not wish, or simply cannot afford, to assume the expense of buying a new television set or of paying additional rental fees, are no longer able to view the PEG channels. All of these subscribers continue to pay the same monthly rate, \$11.18. Therefore, subscribers who did not obtain a free converter box have clearly suffered a reduction

in service – since Cablevision’s rates did not change – and they are effectively receiving a different category of service than subscribers who have access to the necessary equipment. Even subscribers with new QAM tuners cannot readily discern where the channels can be found, unless they are also paying for a converter. Kenny Dec. at ¶ 13.

2. Cablevision’s Actions Confused Subscribers at the Time of the Transition.

On August 12, 2008, Cablevision informed the City that, as of September 16, 2008, Cablevision intended to transmit the PEG channels only in digital format. Broadcast channels on the basic tier would be unaffected. Cablevision announced the change to subscribers by sending its analog-only customers a postcard specifying the date the change would take effect. The company did attempt to soften the blow by offering its analog basic-only subscribers a free converter box, “for life.” This offer, however, was only available to subscribers who specifically requested a converter box by October 16, 2008 – just 30 days after the change took effect – and the notice to subscribers did not actually inform subscribers of that deadline. Only after the City complained about the lack of effective notice did the company extend the deadline to December 31, 2008. Kenny Dec. at ¶¶ 5-6.

Cablevision added to the confusion by not properly informing its own employees of the free converter offer. Earlier in the year, the company had offered subscribers a free converter for one year, because it had moved a total of ten commercial channels off the basic tier entirely, moving these channels to a digital tier of service. As Mr. Kenny explains, “when subscribers – including me – contacted Cablevision regarding the free box ‘for life,’ customer service representatives were unaware of the difference between the offers.” Kenny Dec. at ¶ 12.

In addition, Cablevision’s actions have confused some customers as to the locations of the PEG channels. Customers using a Cablevision-supplied converter box can still find the PEG

channels at their prior locations at Channels 75, 76, and 77. Customers without boxes who use new digital television tuners, however, must find the channels by trial and error. On a Viewsonic monitor, the White Plains PEG channels appear at 99.915, 99.916, and 99.917, while with a Sharp television they are on 99.003, 99.004, and 99.005, and on a Phillips tuner they are on 99.6, 99.7, and 99.8. The fact that the same programming appears on different channel numbers on different sets is obviously confusing to residents, and makes it very difficult for the City and the Commission to inform the public about the programming schedule for the PEG channels. Furthermore, in none of the notices to the City or to subscribers did Cablevision mention that the channel assignments would be different with a QAM tuner. Nor has Cablevision published any materials identifying the new channel assignments. Kenny Dec. at ¶ 10.

4. Cablevision's Actions Have Harmed Subscribers and the City.

Cablevision's changes have imposed substantial burdens on subscribers in at least two ways. First, the free converter is only available to subscribers who were paying only for basic service as of September 15, 2008. New basic-only subscribers, even individuals who first requested service before the December 31 deadline, are not eligible. Kenny Dec. at ¶ 8. In addition, even if an existing analog basic-only subscriber requested a converter by the deadline, if the subscriber moves, upgrades, or makes any change to his or her service, the offer is rescinded. Kenny Dec. at ¶ 9. Therefore, new, basic-only subscribers are not able to receive the PEG signals without paying more, either for a new television set (which raises the tuner issue mentioned above) or for a converter.

Second, even Cablevision's free converter offer was inadequate because it did not extend to the many subscribers who have more than one television set, but do not pay for a converter box for each set. Many residents have older sets that are not attached to converters in laundry

rooms, basements, kitchens, and other locations. Before the change, these customers could get the PEG Channels on all of their sets, because they were available without a converter. After the change, these customers could only get the PEG channels on sets that were attached to converter boxes. It is now impossible for one family member to watch the PEG channels on such a set if another is watching a different program on the “main” set. Thus, although Cablevision claims that only the 11% of subscribers who do not subscribe to digital service are affected by the change, the fact is that a much larger number was harmed. Kenny Dec. at ¶ 7.

Cablevision’s actions have also burdened the City. The City receives free service at 16 government and 17 school sites throughout White Plains. These sites often house multiple agencies and multiple television sets, which are frequently tuned to the PEG channels. For example, there are 6 television sets in various offices in City Hall, and these sets are often used by staff to watch meetings of the Common Council. Until Cablevision digitalized the PEG Channels, no additional equipment was needed for staff to watch those meetings. Today, however, every government office connected to the cable system requires a converter box. Cablevision extended to the City essentially the same offer it made to residential subscribers: one free converter box per building. Consequently, the City has had to acquire new television sets or additional converter boxes to ensure that staff has access to the PEG channels, which has imposed a substantial expense on the City. Kenny Dec. at ¶ 14.

Finally, the PEG Channels are now located on spectrum that tends to be subject to ingress from nearby channels. Signals in the Channel 99 range, where the digital PEG channels are now located, is subject to ingress from FM radio broadcasts. Since the channels were moved, subscribers have begun reporting audio and video interference when watching the PEG channels. Kenny Dec. at ¶ 11.

**B. Harrison Residents Believe that the PEG Channels Should be Available To All Residents and Want the Commission to Uphold that Policy.**

In Harrison, as in White Plains, Cablevision converted all the PEG channels to a digital format, while still providing broadcast channels in an analog format. Cablevision customers with analog television sets cannot view the PEG channels on those sets without buying or leasing a converter box. Walsh Dec. at ¶ 3. Although Cablevision offered to provide some subscribers one free converter box per household, Harrison residents were both confused by the terms of the offer, and distressed by the harm it caused to the community.

Harrison was in the course of franchise renewal discussions with Cablevision when the digitalization issue arose. The community held two public hearings on the proposed renewal franchise; at both hearings, members of the public urged the governing body not to renew the franchise because of Cablevision's treatment of the PEG channels. Residents complained that they had not understood that they would be required to take affirmative action to request a converter box to continue to watch the PEG channels. This is no surprise given the confusion surrounding the broadcast digital conversion, as Cablevision has also been telling subscribers that by signing up for cable they can avoid the need to obtain a box. Walsh Dec. at ¶ 5.

Residents at the renewal hearing also stated clearly and strongly that having the programming available to all subscribers in the community without additional charges was important to the well-being of the community: they felt that by burdening the government's ability to communicate with residents, digitalization was harming the community. Walsh Dec. at ¶ 6.

Cablevision's digitalization has also caused more tangible harms. First, as part of the renewal franchise, Harrison obtained capital funds to be used to improve the capabilities of its government access operations. Limiting access to these channels, however, makes that effort

less effective and the funding less valuable. Second, digitalization has forced the schools to use converters to receive educational programming, but Cablevision agreed to provide only one free converter per school. As different channels may be watched in different classrooms at the same time, this solution limits the usefulness of the PEG channels. The school system must either expend its own funds on additional converters at a time when its budget is stretched, or only allow one classroom per school to view programming on the PEG channels at any one time. Walsh Dec. at ¶ 7.

Harrison ultimately approved the renewal franchise without addressing the digitalization of the PEG channels and the impact on ordinary consumers. The Town/Village was not happy with the solution, but concluded that leaving the matter to the FCC was the only practical way to address it. Although the Town/Village could have conducted a formal renewal proceeding and attempted to insist that Cablevision provide PEG channels on a consumer-friendly basis, this could have taken years and certainly would have involved enormous expense, while providing no short-term relief to the public. Walsh Dec. at ¶ 8.

## **II. CABLEVISION'S DIGITALIZATION OF THE PEG CHANNELS SUBVERTS THE INTENT OF CONGRESS AND IS CONTRARY TO LAW.**

The New York Communities support the legal arguments made in the Michigan Petition and the comments of the Maryland Communities. In particular, the New York Communities wish to draw the Commission's attention to the way in which Cablevision's actions have balkanized the basic tier and the PEG channels. The ability of subscribers in White Plains, Harrison, and other New York communities to get access to the PEG channels now depends on a multitude of factors: whether they pay for digital service; whether they requested a free box in time; whether they have a QAM tuner; and even which company manufactured their television set. The legislative history of the Cable Act, the entire history of the development of PEG



channels and the basic tier, and indeed the very concept of a PEG channel argues against a cable company's ability to do this. Parker Dec. at ¶ 5. We will leave the detailed legal arguments to the pleadings cited above, but in the end the Commission must ask itself just two fundamental questions: What policy did Congress intend to promote by preserving the ability to local governments to require cable operators to make PEG channel capacity available? And is that policy being served by allowing cable operators to shove PEG channels into a corner in the way Cablevision has?

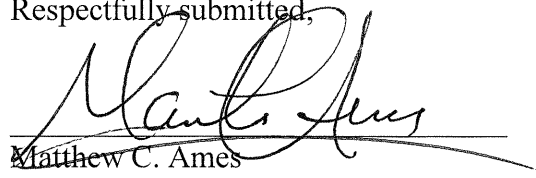
We also note that, as stated in the Kenny Declaration, Cablevision's actions raise questions under New York law, as well as under federal law. Kenny Dec. at ¶ 15. New York regulations state that "[c]hannels designated for PEG use shall be included in the lowest level of service offered by a cable television franchisee . . . ." 16 N.Y.C.C.R. § 895.4(c)(11). We believe that Cablevision has violated this requirement, because requiring additional equipment to receive PEG channels in digital format, while other channels are still available in analog format, means that the PEG channels are not on the lowest available tier. To date, the New York Public Service Commission has chosen not to address the issue, and this decision was proper under the circumstances. The policy implications of Cablevision's actions are a national issue, as the Michigan Petition, the Maryland Comments, and the New York experience make clear. In addition, the matter is before the Commission because the court in *City of Dearborn v. Comcast of Michigan III, Inc.*, No. 08-10156 (E.D. Mich. Nov. 26, 2008), concluded that, at least in that case, the issues turned on an interpretation of federal law. Although it is possible that action at the state level may be appropriate, depending on the precise terms of the law in a given state, the Commission's definition of national policy and interpretation of federal law will help define the role of state law. At the same time, the deference of some states to the FCC indicates that it is

essential for the Commission to clearly address the issues presented in the Dearborn petition, in a manner consistent with the clear Congressional intent to promote PEG access and protect it from harmful control by operators.

### CONCLUSION

For all the foregoing reasons, the Commission should prohibit cable operators from digitalizing PEG access channels in a way that discriminates against those channels.

Respectfully submitted,



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March 9, 2009

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

In the Matter of:

City of Dearborn, MI. et al.

CSR-8128  
MB Docket No. 09-13

**DECLARATION OF JOAN WALSH**

I, Joan Walsh, declare as follows:

1. I submit this declaration under penalty of perjury in response to the notice issued in the above-captioned proceeding.
2. I am the Supervisor/Mayor of the Town/Village of Harrison, New York. Harrison is a community of about 25,000 people, located in Westchester County in New York State, 30 miles northeast of Manhattan, close to Long Island Sound. Cable television service is currently provided by Cablevision.
3. Last year, over the objection of Harrison, Cablevision converted all the PEG channels in the community to a digital format. It continues to provide broadcast channels in an analog format. At this point, a Cablevision customer with an analog television set cannot view the PEG channels on that set without buying or leasing a converter box. At the time it announced the conversion, Cablevision did offer to provide some subscribers one free converter box per household, but as I explain, this offer clearly caused confusion in our community.
4. After years of negotiations, we recently renewed our franchise with Cablevision,. We attempted to address the problem caused by the digitalization of the PEG channels with Cablevision, but Cablevision was not willing to agree to provide PEG channels in the same way it provides broadcast channels, or agree to provide converters to subscribers automatically so that

the PEG channels could be viewed. It made it clear it would not agree to renewal if we tried to require it to offer existing PEG channels without additional equipment or service charges above the charges subscribers must pay to receive basic service.

5. We held two public hearings this year on the proposed renewal franchise. At both, members of the public urged us not to renew the Cablevision franchise because of Cablevision's treatment of the PEG channels. As I understood their comments, the residents complained that they had not understood that they would be required to take affirmative action to request a converter box to continue to watch the PEG channels. This is not so surprising given the confusion surrounding the broadcast digital conversion, as Cablevision also tells subscribers that by signing up for cable, they can avoid the need to obtain a box. In fact, Cablevision was at the meeting and tried to explain its policies, but actually caused even more confusion.

6. More generally, it was clear that our residents highly valued our government channel, which covers local meetings. They were concerned not just about their own situation. They also felt that having the programming available to all subscribers in the community without additional charges is important to the well-being of the community. The feelings of harm that they expressed were quite strong. As the Supervisor/Mayor I agree with their concerns: by burdening our ability to communicate with residents, the digitalization harms the community. In fact, I have embarked on an initiative to expand PEG programming. Traditionally, there has only been a limited amount of PEG programming in this community. As part of the renewal franchise, we obtained capital funds so that we could provide new communications tools to our community. However, by limiting the access to these channels, the tools become less valuable.

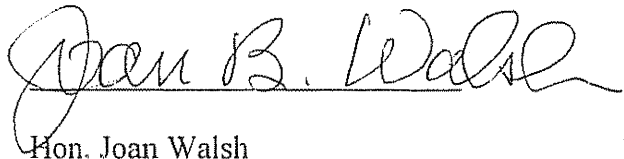
7. I should note that Cablevision was amenable to addressing the PEG digitalization in some ways. While Cablevision now provides one free converter per school, since different

channels may be watched in different classrooms at the same time, most have multiple televisions throughout each school. As a result, in order for the PEG channels to be viewed in every classroom, schools will be required to pay for additional converters in order to be able to receive educational programming, further burdening already stretched school budgets.

6. The Town/Village ultimately approved the franchise with Cablevision without addressing the digitalization of the PEG channels and the impact on ordinary consumers. We did make it clear we were not approving the PEG arrangement, and that Cablevision was required to comply with state and federal law with respect to the provision of PEG channels. We adopted this approach because we were aware that the issue of PEG digitalization was before the FCC. In our view, FCC resolution of the issue was the only practical way to address it. We recognized that we could have conducted a formal renewal proceeding and attempted to insist that Cablevision provide PEG channels on a consumer-friendly basis. However, that could have taken years, and involved enormous expense, while providing no short-term relief to the public. This is why rapid and favorable FCC action on the petition is important.

9. I declare under penalty of perjury that the foregoing is true and correct.

This declaration was executed on the 6<sup>th</sup> day of March, 2009, in the Town/Village of Harrison, New York.

A handwritten signature in dark ink, appearing to read "Joan B. Walsh". The signature is fluid and cursive, with a horizontal line drawn across the middle of the name.

Hon. Joan Walsh

Supervisor/Mayor

Town/Village of Harrison

**Before the  
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In the Matter of:

Petitions for Declaratory Ruling Regarding  
Public, Educational, and Governmental  
Programming

MB Docket No. 09-13  
CSR-8126, CSR-8127, CSR-8128

**DECLARATION OF JAMES KENNY**

I, James Kenny, declare as follows:

1. I am the Executive Director of the White Plains Cable Access Commission. I have been employed in that capacity since July 1, 2005. I submit this Declaration in support of the Comments of the City of White Plains and the Town of Harrison in the above-captioned proceeding. I am fully competent to testify to the facts set forth herein, and if called as witness, would testify to them.

2. The City of White Plains, New York, has a population of about 57,000 people. Approximately 19,000 households in the City subscribe to cable television service provided by either Cablevision or Verizon. Under the terms of their cable franchises, both companies are required to provide three public, educational, and government access channels (the "PEG Channels"). One PEG Channel is used by the City to provide government access programming to residents; a second is dedicated to public access programming; and the third is used by the White Plains City School District. These channels were previously carried by Cablevision in analog format and appeared in the channel line-up as channels 75 (government access), 76 (public access), and 77 (educational access).

3. The Commission manages the public access studio in the City and oversees the production of programming on the government access channel. The Commission, for example, provides staff to operate cameras at meetings of the Common Council, as well as City events, and programs produced through the Mayor's Office. The Commission also assists in the production of public access television programming on the City's public access channel, operating a TV studio and post production facility for this purpose, in addition to programming both the public and government channels for both cable providers. As Executive Director of the Commission, it is my responsibility to provide access to the public channel and production facilities on a first-come, first-served, non-discriminatory basis to the residents, organizations, and business community of the City of White Plains. The Commission also works closely with the City government to provide City news and information to the cable subscribers of White Plains.

4. As Executive Director, and a cable subscriber in the nearby Village of Mamaroneck, I am very familiar with the events surrounding Cablevision's decision to convert the signals of the PEG Channels from analog to digital, and to change their channel assignments, effectively removing them from the basic tier of service for subscribers who do not have suitable equipment.

5. On August 12, 2008, Cablevision sent a letter to the Mayor of White Plains stating that, as of September 16, 2008, Cablevision intended to transmit the PEG Channels on its system only in digital format. As a result of this change, subscribers in White Plains would be required to have a cable-ready television equipped with a QAM tuner, a digital converter box, or a CableCard if they wish to view the PEG Channels. This change was the latest in a series of

steps in which Cablevision has progressively moved channels off the analog basic tier and converted them to digital, thus making them unavailable to many subscribers.

6. Cablevision announced the change to subscribers by sending its analog-only customers a postcard specifying the date the change would take effect. The company made a superficial attempt to ameliorate the effects of the change by offering its analog basic-only subscribers a free converter box, “for life.” At the same time, however, this offer was limited in ways that made it clear that the offer was essentially window-dressing. Not only was the offer only available to subscribers who specifically requested a converter box by October 16, 2008 – only 30 days after the change took effect – but the notice to subscribers did not actually inform subscribers of the deadline for requesting the box. Thus, many subscribers found themselves unable to take advantage of the company’s offer simply because of a lack of information. Only after the City complained about the lack of effective notice did the company extend the deadline to December 31, 2008.

7. Cablevision’s notice was also inadequate because it did not extend to the many subscribers who have more than one television set, but do not pay for a converter box for each set. Many residents have older sets that are not attached to converters in laundry rooms, basements, kitchens and other locations. Before the change, these customers could get the PEG Channels on all of their sets, because they were available without a converter. After the change, these customer could only get the PEG Channels on sets that were attached to converter boxes. It is now impossible for one family member to watch the PEG Channels on such a set if another is watching a different program on the “main” set. Thus, although Cablevision claims that only the 11% of subscribers who do not subscribe to digital service are affected by the change, the fact is that a much larger number is harmed.



8. Furthermore, the free converter is only available to subscribers who were paying only for basic service as of September 15, 2008. New basic-only subscribers, even individuals who first requested service before the December 31 deadline, are not eligible.

9. In fact, even if an existing analog basic-only subscriber requested a converter by the extended December 31 deadline, the “for life” offer is further limited. If a subscriber moves, upgrades, or makes any change to his or her service, the offer is rescinded. Thus, subscribers who merely move and again order only analog basic service at their new residence lose the ability to receive the PEG Channels. Furthermore, subscribers who upgrade have already lost the option of seeing the PEG channels on any additional sets they own, as discussed above.

10. In addition, Cablevision’s actions have confused some customers as to the PEG Channel designations. With a Cablevision-supplied converter box, the PEG Channels retained their prior assignments at Channels 75, 76, and 77. New digital television tuners, however, all seem to be a little different in their tuning properties. On a Viewsonic monitor, the White Plains PEG Channels appear at 99.915, 99.916, and 99.917, while with a Sharp television they are on 99.003, 99.004, and 99.005, and on a Phillips tuner they are on 99.6, 99.7, and 99.8. Whether this is a characteristic of the tuners, of Cablevision’s system, or some other factor I do not know, but the fact that the same programming appears on different channel numbers on different sets is obviously confusing to residents, and makes it very difficult for the City and the Commission to inform the public about the programming schedule for the PEG Channels. Furthermore, in none of the notices to the City or to subscribers did Cablevision mention that the channel assignments would be different with a QAM tuner. Nor has Cablevision published any materials identifying the new channel assignments. In fact, on the day of the transition, when I could not find the White Plains PEG Channels on a QAM tuner, I called two different Cablevision offices to ask

where they had been moved to, and neither office knew the answer. They called me back two hours later to inform me that they “should be in the 99 range.”

11. In addition, the PEG Channels are now located on very undesirable spectrum, from a technical perspective. It is my understanding that signals in the channel 99 range are transmitted within the FM radio spectrum and are subject to ingress from FM radio broadcasts. This can cause both audio and video interference at the individual subscribers homes. On several occasions I have received complaints from subscribers about the access channels ‘blipping out’ while our channel monitoring system shows a solid return signal. This indicates that there is a system-wide problem that may manifest itself differently not just in every subscribers’ home, but on every television set. A Cablevision technician has told me that the company switched from using crimp-type coaxial cable connectors to a compression fitting that better resists ingress from broadcast signals because of this problem. It is also my understanding, however, that the company is only undertaking this work in response to specific complaints and new installations.

12. Cablevision added to the confusion by not properly informing its own employees of the free converter offer. Earlier in the year, the company had offered subscribers a free converter for one year, because it had moved a total of ten commercial channels off the basic tier entirely, moving these channels to a digital tier of service. But when subscribers – including me – contacted Cablevision regarding the free box “for life,” customer service representatives were unaware of the difference between the offers.

13. In short, with the exception of grandfathered subscribers who acted in time, subscribers who receive only the basic tier of service and do not wish, or simply cannot afford, to assume the expense of buying a new television set or of paying additional rental fees, are no longer able to view the PEG channels. Even subscribers with new QAM tuners cannot readily

discern where the channels can be found. All of these subscribers continue to pay the same monthly rate, \$11.18. These viewers have thus suffered a reduction in service – since Cablevision’s rates did not change – and are effectively receiving a different category of service than subscribers who have access to the necessary equipment.

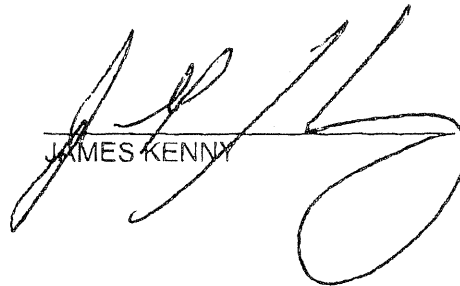
14. Cablevision’s actions have also burdened the City. The City receives free service at 16 government and 17 school sites throughout White Plains. These sites often house multiple agencies and multiple television sets, which are frequently tuned to the PEG channels. For example, there are 6 television sets in various offices in City Hall, and these sets are often used by staff to watch meetings of the Common Council. Until Cablevision digitalized the PEG Channels, no additional equipment was needed for staff to watch those meetings. Today, however, every government office connected to the cable system requires a converter box. Cablevision extended to the City essentially the same offer it made to residential subscribers: one free converter box per building. Consequently, the City has had to acquire new television sets or additional converter boxes to ensure that staff has access to the PEG channels, which has imposed a substantial expense on the City.

15. By letter dated September 23, 2008, I contacted Cablevision in my capacity as Executive Director. In that letter, I noted that in my view Cablevision’s actions violated the terms of the City’s franchise agreement, as well as New York State law. New York cable regulations require that “channels designated for PEG use shall be included in the lowest level of service offered by the cable television franchisee . . . .” 16 N.Y.C.C.R. 895.4(c)(11). On October 3, 2008, Cablevision responded, asserting that it had the legal right to do what it had done, because the company “continues to offer PEG programming on its Basic tier.”

16. As of the date of this Declaration, basic-only subscribers who were in that status as of September 15, 2008, and who requested a free converter box by December 31, 2008, can receive the PEG channels on a single television set. Basic subscribers who missed the deadline, or who make any changes in their service, cannot receive the PEG channels unless they pay for a new television set or CABLECard. Even then, subscribers who buy new sets will not find them at the same channel location as other subscribers. And no subscriber, to any level of service, can receive the PEG channels on any additional outlet unless the outlet is connected to a QAM television set or the subscriber is paying for a converter box at that outlet. The only other channels that are being treated in the same fashion are the Eternal Word Television Network (EWTN), Cablevision's local origination channel, and digital duplication of the Home Shopping Network, which is also carried on analog channel 19.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on the 6th day of March, 2009, in the City of White Plains, New York.

  
JAMES KENNY

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**Before the  
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MB Docket No. 09-13  
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**DECLARATION OF EVERETT C. PARKER**

I, Everett C. Parker, declare as follows:

1. I submit this Declaration in support of the Comments of the City of White Plains and the Town of Harrison in the above-captioned proceeding. I am fully competent to testify to the facts set forth herein, and if called as witness, would testify to them.
2. I am a member of the White Plains Cable Access Commission, and have served in that capacity since February, 1994.
3. For many years, I have been extensively involved in the development of communications policy in the United States. In 1954, I founded the Office of Communication of the United Church of Christ, and I headed that office until 1983. Through this experience I am familiar with the long-standing purpose of the federal Cable Act's requirement that cable operators provide public, educational and governmental ("PEG") access channels and facilities to meet the needs of local communities. In particular, I am familiar with the policy behind that requirement. I was involved in various aspects of the FCC's development of that requirement in its original cable rules, as well as in the adoption of the Cable Act in 1984.

4. As a member of the White Plains Cable Access Commission, I have also been involved in the development of PEG access programming in White Plains. White Plains has an active public access station which has been in operation since cable TV first arrived in White Plains in 1980. I, personally, have been producing my own program at the White Plains public access production facility for the past ten years. The access center is serving the community with production support, channel access, and government access programming. The community produces about 350 hours of original programming annually in the facility each year. Another 400 hours of channel access time is provided to community producers, local organizations, and community sponsors.

5. PEG channels fulfill a vital need, by offering local governments the ability to communicate with their constituents, by allowing the public the opportunity to become better informed, and by permitting the public to communicate in ways otherwise not open to individuals. One of the guiding principles behind cable franchising since its inception has been that the public should have an opportunity to benefit from the private use of public resources. Consequently, I am very disturbed by recent developments in White Plains. Cablevision's treatment of the PEG channels has not only relegated them to second-class status, by treating them differently from the broadcast channels, but Cablevision's actions have made it more difficult for City residents to find and view the PEG channels. This is entirely contrary to the historical purpose and intent of PEG access programming, as well as decades of actual practice. The cable operator must not be allowed to discriminate against the PEG channels; if cable operators can be permitted to discourage PEG viewership in this way, they may take other even more harmful steps in the future.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on the 9th day of March, 2009, in the City of White Plains, New York.

  
EVERETT C. PARKER

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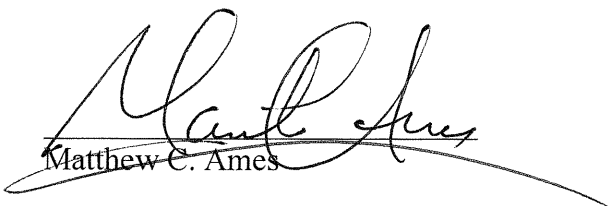


CERTIFICATE OF SERVICE

I hereby certify that I have, on this 9th day of March 2009, caused a true and correct copy of the foregoing Comments to be served on the following individuals via first-class U.S. mail, postage prepaid:

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Spiegel & McDiarmid  
1333 New Hampshire Avenue, N.W.  
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Matthew C. Ames